

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: McCarthy & Wagner Properties, LLC)
 Ward 088, Block 008, Parcel 00203) Shelby County
 Commercial Property)
 Tax Year 2005)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$345,000	\$ -0-	\$345,000	\$138,000

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on September 20, 2006 in Memphis, Tennessee. In attendance at the hearing were William L. Wagner, the appellant, and Shelby County Property Assessor's representative Corey Ware.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of an unimproved 13.45 acre tract located at 0 English Towne Drive in Memphis, Tennessee.

The taxpayer contended that subject property should be valued at \$20,000 in accordance with his purchase of subject property. Mr. Wagner summarized the circumstances surrounding the sale and the basis for the purchase price in an attachment to the appeal form as follows:

In March of 2005 I purchased this 13.45 acre parcel from James Henley for \$20,000. Mr. Henley had originally purchased this site in August, 1999 for \$35,200. It was one of several remaining parcels left over from the development of the surrounding apartments and single family housing sites. . . .

Mr. Henley purchased this site with the intention of selling it as purchased (undeveloped) for a profit. After over 5 years of trying to sell the site and one auction there were no interested buyers. In February 2005 James Henley approached me about purchasing the property since he knew I had developed an area further down English Towne Dr. in 2001. Upon inspecting the site I discovered a large drainage ditch running through most of the area that I hoped to develop along English Towne Dr. and a pond covered most of the remaining acreage. The site was covered with trees and would require extensive clearing, grading, new underground drainage, utilities brought to the site and rezoning. We also determined that approximately 70% of the land was not usable because of the pond and decided if we were to purchase this site we would donate that portion to charity.

Using all of this information, we agreed to a purchase price of \$20,000 with Mr. Henley and closed on the property on March 23, 2005. On December 29, 2005 we donated approximately 9.2 acres of this site to Goodwill Homes Community Services. . . .

Mr. Wagner also testified that he estimated development costs at \$150,000 - \$200,000.

The assessor contended that subject property should be valued at \$196,200. In support of this position, five sales of smaller parcels on English Towne Road were introduced into evidence. Mr. Ware maintained that those sales support appraising 6 acres at \$31,700 per acre and the remaining 7.45 acres at \$800 per acre.

The first issue before the administrative judge concerns jurisdiction. As stated at the hearing, the administrative judge finds that the taxpayer established reasonable cause under Tenn. Code Ann. § 67-5-1412(e) for not appearing before the Shelby County Board of Equalization. The administrative judge finds that Mr. Wagner filed a timely appeal with the Shelby County Board of Equalization. Mr. Wagner subsequently called the county board to inquire when his hearing would be held. For reasons that are simply not clear, either the notice was not issued or it was issued but not received. In either event, the administrative judge finds that Mr. Wagner did everything he could reasonably be expected to do in order to secure a hearing with the local board.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at \$142,100. As will be discussed below, the administrative judge finds that 4.25 acres should be appraised at \$31,700 per acre and 9.20 acres at \$800 per acre.

Since the taxpayer is appealing from the determination of the Shelby County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds that Mr. Wagner's purchase of subject property cannot be adopted as the basis of valuation for any of several reasons. First, January 1, 2005 constitutes the relevant assessment date pursuant to Tenn. Code Ann. § 67-5-504(a). The administrative judge finds the sale occurred after the assessment date and is therefore irrelevant. See *Acme Boot Company and Ashland City Industrial Corporation* (Cheatham County - Tax Year 1989) wherein the Assessment Appeals Commission ruled that "[e]vents occurring after [the assessment] date are not relevant unless offered for the limited purpose

of showing that assumptions reasonably made on or before the assessment date have been borne out by subsequent events.” Final Decision and Order at 3. Second, Mr. Wagner appeared to concede in his testimony that subject property had a greater fair market value than \$20,000 on January 1, 2005. Third, the administrative judge finds that Mr. Henley was not present to testify or undergo cross-examination. Thus, it cannot be determined what efforts were actually made to sell subject property prior to Mr. Wagner’s purchase.

Given the foregoing, the administrative judge would normally affirm the current appraisal of \$345,000 based upon a presumption of correctness. In this case, however, the assessor conceded that on January 1, 2005 a knowledgeable buyer would have realized that most of subject acreage was unsuitable for development. The administrative judge finds that a knowledgeable buyer would have also realized that only approximately 4.25 acres were developable. Accordingly, the administrative judge finds 4.25 acres should be appraised at \$31,700 per acre and 9.20 acres at \$800 per acre.

The administrative judge has utilized Mr. Ware’s \$31,700 and \$800 per acre value estimates as unrefuted. Respectfully, Mr. Wagner offered no proof of land value except his \$20,000 purchase price. Absent additional proof, the administrative judge must presume the assessor’s per acre value estimates are correct. The administrative judge finds that Mr. Wagner’s opinion should receive greater weight insofar as developable vs. undevelopable acreage is concerned.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2005:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$142,100	\$ -0-	\$142,100	\$56,840

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

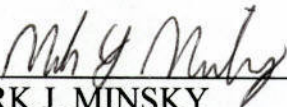
1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal “**must be filed within thirty (30) days from the date the initial decision is sent.**” Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of

the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 28th day of September, 2006.



MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. William L. Wagner
Tameaka Stanton-Riley, Appeals Manager